

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.12.2020

PRONOUNCED ON: 22.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.778 of 2014

M/s. Trans Freight Shipping Services
Represented by its Proprietor
Mr.H.Ramesh,
S/o. Late S.Haridas
Plot No. 179, TSS Tower
Kavuri Hills, Phase II
Madhapurm Hyderabad – 81
Telengana State

... Plaintiff

Vs

Mr.N.K.Shashi Kumar
No.89-A, Santhome High Road
Raja Annamallaipuram
Chennai -28.

.. Defendant

WEB COPY

PRAYER:- This Civil Suit is filed under Order VII Rules 1 & 2 of the Civil Procedure Code 1908 praying for a Judgment and Decree against the defendant for the following reliefs:

(a) for a sum of Rs.2,70,38,238/- (Rupees Two Crores and Seventy Lakhs and Thirty Eight Thousand and Two Hundred and Thirty Eight

Only) which is the suit claim together with future interest thereon @ 12% p.a., from the date of the suit till the date of final relisation; and

(b) For a sum of Rs.2,00,0000/- (Rupees Two Crores only) towards damages and mental agony caused to the plaintiff with future interest thereon @ 12% p.a., from the date of the suit till the date of final reliazation.

For plaintiff : Mr.D.Saikumaran

For Defendant : Ms. Shanti Meenakshi
for Ms.K.Sumathy

JUDGEMENT

The plaintiff M/s. Trans Freight Shipping Services, represented by its Proprietor Mr.H.Ramesh, has filed the present suit against the defendant N.K.Shashi Kumar, seeking a Judgment and Decree for a sum of Rs. 2,70,38,238/- together with interest at 12% p.a., from the date of the suit till the date of realisation and also for a sum of Rs.2/- Crores towards damages and mental agony together with interest at 12% p.a., from the date of suit till the date of realisation and for costs.

2. In the plaint, the plaintiff had stated that he is a disciple of Lord Sadhguru and during one of the visits, had got acquainted with the defendant, who introduced himself as a Chemical Engineer cum Scientist owning two companies by name M/s. AUM Consultancy Pvt. Ltd., and M/s. AUM Agrotech Ltd.

3. The plaintiff claimed that the defendant stated that he had completed and erected bio engineering plants of various specifications and had developed organic bio formula for business ventures like biodiesel and herbal extraction. The defendant held out that the business was doing very well in India and also outside. It had been further stated in the plaint that in May 2010, the defendant came to Hyderabad and stated that he had suffered a business set back and had no money to pay even salary to the workers and to make payment to the creditors. He wanted capital to be infused into the two businesses.

4. The plaintiff and the defendant entered into two Share Purchase Agreements both dated 14.06.2010 with respect to both the companies. The plaintiff stated that he had paid an amount of Rs.1,05,00,000/- to the defendant towards purchase of 60% share in the two companies. There

were two separate agreements transferring 60% shares in the two companies to the plaintiff. Both the agreements were dated 14.06.2010. Out of the amount paid by the plaintiff, a sum of Rs.58,80,000/- was credited towards purchase of shares of M/s. AUM Consultancy Ltd., and Rs.46,20,000/- was paid towards purchase of shares of M/s. AUM Agrotech Ltd.

5. The plaintiff further stated that a balance amount of Rs.2.28 Crores was payable to M/s. AUM Agrotech Ltd., which entire amount was to be paid on or before 30.06.2016. The plaintiff further stated that both the companies were in a financial mess. A Board meeting was called and the plaintiff and his nominees were inducted in the Board. However, the defendant travelled to New Zealand/Australia for more than a year to seek his Resident Visa and this seriously affected the on going business projects in Pathanjali Limited, SBTL-Vizag and Iranian Clients. These companies complained non-delivery and inferior works which caused serious difficulties for the company. The Agro Chemicals Division came to a standstill. The plaintiff claimed that he entered into an agreement with the defendant *bona fide* believing the words of the defendant that the two companies were doing extremely well and that there were sufficient

projects on hand. The plaintiff claimed that the defendant had actually trapped him into the agreements. The plaintiff also realised that 42.50% shareholding in M/s. AUM Consultancy Pvt. Ltd., belonged to an American National Phil Rikwin. These were not transferred as promised by the defendant and this caused serious difficulties in raising funds for future growth.

6. The defendant had also filed a suit in USA against Phil Rikwin and the plaintiff had to pay the American lawyers a sum of Rs.22,50,000/-.

7. The plaintiff tried his best to stabilise the activities of the two companies.

8. It had been stated that in clause 5 of the agreement, it had been provided that if there is any inconsistency between the figures in the balance sheet and the actuals, the plaintiff should be indemnified by the defendant. As per the balance sheet of M/s. AUM Consultancy Pvt. Ltd., the company was to receive Rs.1,80,00,000/- from AUM Gurudev Enterprises, Chennai. However, on verification on records, the plaintiff found that the entire paid up capital of the company was Rs.1,00,000/-

which clearly showed that there was misrepresentation by the defendant. There was also an income tax demand of Rs.93,83,130/- for the returns submitted by the defendant for the year 2019. The plaintiff stated that all these brought down the value of the two companies.

9. The plaintiff stated that the defendant had informed that M/s. SBTL Vizag had to pay a sum of Rs.7,93,93,602/-. The plaintiff prepared a bill and sent the same but M/s. SBTL Vizag returned the bill and claimed damages for delay and non performance.

10. The plaintiff submitted that he had to suffer loss of revenue and also had to pay income tax. The plaintiff also invested a huge amount in a Canadian Subsidiary Company, namely, Phyto Chemicals Research Inc., and entered into a joint venture with M/s. Isha Foundations for setting up herbal extraction plant in India. But the plaintiff was again put to loss.

11. The plaintiff also had to pay the instalments for the purchase of a Nissan Car, an Indigo Car and a Bolero Jeep amounting to Rs.17,55,738/-. The defendant had also taken possession of all the company vehicles. The company also paid the travelling expenditure of

the defendant to get permanent citizenship to New Zealand amounting Rs.45,00,000/-. The plaintiff also paid a sum of Rs.42,000/- per month as rents to the defendant.

12. The plaintiff was not able to pay the second instalment of Rs.23,00,000/- and the balance of Rs.2.28 crores which was due on 14.06.2012. The defendant therefore removed the raw materials of the company and also the assets in November 2012. The plaintiff had given a police complaint which was of no avail.

13. The plaintiff stated that because of the false promises of the defendant, he had suffered huge losses by paying salary to the employees, by meeting out the expenses by paying the creditors and also by paying the rent and travel expenses of the defendant. The plaintiff's image was also damaged. It is under these circumstances that the plaintiff had filed the present suit seeking the reliefs as stated above.

14. The plaintiff had valued the assessable loss as follows:-

1.	Advance amount paid on account of M/s. Aum Agrotech Ltd.,	Rs.46,20,000/-
2.	Advance paid on account of M/s. Aum Consultancy Pvt. Limited.,	Rs.58,80,000/-
3.	Interest on the said advance amounts- 51 months @ 18% per annum	Rs.80,32,500/-
4.	Lawyer fees paid to US lawyer	Rs.22,50,000/-
5.	Purchase of Car, Jeep and related expenses	Rs.17,55,738/-
6.	Defendant's travelling and other expenses-	Rs.45,00,000/-
	TOTAL	Rs.2,70,38,238/-

15. The plaintiff had also claimed a sum of Rs.2,00,00,000/- towards damages and mental agony.

16. The defendant filed a written statement, in which, he denied each and every averment made by the plaintiff. The defendant claimed that he had never gone to the Ashram which the plaintiff had mentioned. The defendant denied that he had sought the help of the plaintiff to revive the two companies. The defendant claimed that the plaintiff had conducted due diligence with respect to every aspect of the companies and had thereafter, invested the amounts as stated. The defendant claimed that he trusted the plaintiff. The plaintiff had also held out that he had great

expertise in business activities. The defendants stated that the plaintiff paid Rs.1,05,00,000/- for transfer of 60% of the shareholding in the two companies, and with such transfer, the plaintiff and his family members actually also obtained 60% stake in both the companies.

17. The defendant denied that the companies were in a financial mess at the time of such take over. The defendant further stated that on account of his travel requirements to New Zealand, he had given exclusive cheque signing powers and also control of the companies to the plaintiff. The defendant had to travel to New Zealand owing to his health issues and to be with his children. The defendant claimed that he remained with the plaintiff for three months and thereafter the plaintiff began to question when the defendant was going to leave. When the defendant left India, the plaintiff started to blame him for not being stationed in India. He stated that the Board had also resolved that the defendant would be settling in New Zealand and was therefore relieved from the Directorship of M/s. AUM Agrotech Ltd. The defendant claimed that the companies had a good market and reputation. The defendant denied the claim of the plaintiff with respect to payment of Rs.22.50 lakhs to the Advocates in view of the litigation with Phil Rikwin. The defendant denied that there

are misrepresentation regarding the assets and immovable properties of the two companies. The defendant put the plaintiff to strict proof with respect to the transactions with M/s. SBTL Vizag. The defendant denied that the plaintiff was put to loss or expenditure. The defendant also stated that the plaintiff was silent about the cash resources that he had taken over and the inflow that had come to the companies. The defendant put the plaintiff to strict proof with respect to the statements regarding payments made for the hire charges of the company vehicles. The defendant stated that the amounts claimed are based on false statement. The defendant therefore prayed that the suit should be dismissed.

18. On the basis of the above pleadings, the following issues were framed:-

“(i) Is the suit a mala fide endeavour of the plaintiff to overcome his acts of breach of trust, maladministration and misappropriations in relation to companies founded by the defendant?”

(ii) Are the Share Purchase Agreements

voidable at the instance of the plaintiff as contended by the plaintiff?

(iii) Has the plaintiff, who contends that the Share Purchase Agreements were voidable at his instance, issued notice of rescission exercising option to avoid within a reasonable time?

(iv) Can the plaintiff maintain the present suit in breach of Section 64 of the Indian Contract Act?

(v) Can the plaintiff approbate and reprobate, laying two parallel actions that are mutually destructive, namely, suit for rescission before this Court and an action praying for specific performance before NCLT, Chennai?

(vi) Has the plaintiff rendered true and proper accounts for the companies with supporting true records for the period of his management in support of his suit claim?

(vii) Are the suit claims true, justified and correct? Is the plaintiff entitled to various amounts prayed for in the plaint?

(viii) Has the plaintiff made averments in the plaint to satisfy the issue of limitation?

(ix) Is the suit liable to be dismissed as abuse of process of law awarding exemplary costs against the plaintiff?

(x) Whether the defendant, who had failed to file a counter claim, can maintain his defense in the suit? and

(xi) To what other relief, are the parties entitled to?"

19. The parties were invited to adduce evidence. Accordingly, the plaintiff examined its Proprietor H.Ramesh as PW-1 and marked Exs. P-1 to P-20. During cross examination, the defendant marked Exs. D-1 to D-77. The defendant did not examine any witness.

20. Heard arguments advanced by Mr.D.Saikumaran, learned counsel for the plaintiff and Ms. Shanti Meenakshi, learned counsel for the defendant.

Issue Nos. 1, 2, 3, 4 & 6:

21. The suit had been filed by the plaintiff seeking a Judgment and Decree against the defendant for a sum of Rs.2,70,38,238/- together with future interest at 12% p.a., from the date of the suit till date of realisation and for a further sum of Rs.2,00,0000/- towards damages for mental agony caused to the plaintiff with future interest at 12% p.a., from the date of the suit till the date of realisation and for costs of the suit.

22. In the plaint, the liquidated amount of Rs.2,70,38,238/- had been further stated in detailed as follows:-

1.	Advance amount paid on account of M/s. Aum Agrotech Ltd.,	Rs.46,20,000/-
2.	Advance paid on account of M/s. Aum Consultancy Pvt. Limited.,	Rs.58,80,000/-
3.	Interest on the said advance amounts- 51 months @ 18% per annum	Rs.80,32,500/-
4.	Lawyer fees paid to US lawyer	Rs.22,50,000/-
5.	Purchase of Car, Jeep and related expenses	Rs.17,55,738/-
6.	Defendant's travelling and other expenses-	Rs.45,00,000/-
	TOTAL	Rs.2,70,38,238/-

23. It is the case of the plaintiff that he had got into the acquaintance of the defendant, who had introduced himself as a Chemical Engineering/Scientist and owning two companies, M/s. AUM Consultancy

Pvt. Ltd., and M/s. AUM Agrotech Ltd. It is the further case that the defendant had held out that he had successfully completed and erected bio engineering plants and had developed organic bio formula for business ventures like biodiesel and herbal extraction. The defendant later, according to the plaintiff, approached the plaintiff seeking financial assistance owing to business set back and sought infusion of working capital.

24. It is the claim of the plaintiff that without following due diligence, he entered into two Share Purchase Agreements dated 14.60.2010 with the defendant with respect of the two companies, M/s. AUM Consultancy Pvt. Ltd., and M/s. AUM Agrotech Ltd. The xerox copy of the share purchase agreement with respect to M/s. AUM Agrotech Limited had been filed as Ex.P-1 and the xerox copy of the share purchase agreement with respect to M/s. AUM Consultancy Pvt. Ltd., had been filed as Ex.P-2. The documents have been marked after being compared with the originals.

25. In Ex.P-1, it had been stated that the plaintiff herein shall acquire

60% of the total equity in M/s. AUM Agrotech Limited and the acquisition shall be on the face value of the shares that is at Rs.100/- per share. By the said agreement, the plaintiff and the defendant had also agreed to revalue some of the fixed assets of the company. The plaintiff had agreed to pay 60% of the revaluation reserve which was fixed at Rs.3.80 crores which 60% amounted to Rs.2.28 crores to the defendant within a period of five years with a one year payment moratorium. The defendant had undertaken to transfer land to an extent of 1.44 acres in favour of the company free of cost and had further undertaken to transfer additional land area of 4.56 acres in favour of the company as and when the company requires additional land at a mutually agreed price. There was a further commitment by the plaintiff to pay the amount of Rs.2.28 crores in the following manner:-

10% on or before 30.06.2012;
 15% on or before 30.06.2013;
 20% on or before 30.06.2014;
 25% on or before 30.06.2015
 and balance 30% on or before 30.06.2016.

26. It was further stated that the total amount payable for transfer of

60% of the shares of the company by the defendant was Rs.46,20,000/- and

that the plaintiff had paid the said amount by way of demand draft. The plaintiff and his wife had also been co-opted as Directors. The position of Chairman and Managing Director was also to rest with the plaintiff or his nominee. It was also very specifically provided that the Management of the Company shall be taken over by the plaintiff and he reserved the right to nominate a Chief Executive Officer and Chief Financial Officer for the company. The entire Administration and Financial Management vested with the plaintiff. The defendant was designated as Director (Technical). The plaintiff also reserved the right to carry out due diligence of the accounts, take inventory of assets and other assessments and verify the liabilities of the company at any time and if there was any inconsistency between the figures in the balance sheet and the actuals, the defendant had agreed to indemnify the plaintiff. The defendant also undertook to actively participate in the business projects and in execution of the work orders for a period of five years. The plaintiff undertook to infuse additional capital and financial resources by way of bank borrowings and unsecured loans from the Directors to meet the working capital requirement of the company. The plaintiff also reserved the right to hypothecate/mortgage/create lien over the fixed and current assets of the company in favour of banks and financial institution for raising working

capital requirements. The defendant undertook to pass to the plaintiff the technical know how and technology for setting up various types of chemical projects and machinery within a period of six months.

27. In Ex.P2, the agreement with respect to M/s. AUM Consultancy Pvt. Ltd., the plaintiff had agreed to acquire 60% of the total equity held by the defendant and his family members at the face value of Rs.10/- per share. The total consideration was fixed at Rs.58,80,000/-. This amount was paid by the plaintiff to the defendant by way of demand draft. Even in this agreement, it had been provided that the plaintiff and his wife shall be co-opted as Directors and that the Management of the company shall be taken over by the plaintiff, who also reserved the right to nominate Chief Executive Officer and Chief Financial Officer. The entire administration and financial management vested with the plaintiff. The defendant was designated as Director (Technical). The plaintiff, even in this agreement also reserved the right to carry out due diligence of the accounts, take inventory of stocks and other current assets and verify the liabilities of the company at any time and the defendant agreed to indemnify the plaintiff, if there was inconsistency and variation between the figures in the balance sheet and the actuals. The other clauses were also similar to that of Ex.P-1.

28. An analysis of the covenants in the two agreements lead to the following inferences:

(1) The plaintiff had agreed to purchase 60% of the shares at Rs.100/- per share in M/s. AUM Agrotech Ltd., and at Rs.10/- per share in M/s. AUM Consultancy Pvt. Ltd.,

(2) The total value of the said shares in M/s. AUM Agrotech Ltd., was fixed at Rs.46,20,000/- and in M/s. AUM Consultancy Pvt. Ltd., was fixed at Rs.58,80,000/-. Those two amounts have been paid by the plaintiff to the defendant;

(3) There was a further agreement with respect to M/s. AUM Consultancy Pvt. Ltd., with respect to revaluation of the fixed assets and the plaintiff had agreed to pay 60% of the revaluation reserve. The revaluation reserve was fixed at Rs.3.80 crores, and 60% of such revaluation reserve was fixed at Rs.2.28 crores. This amount was payable by the plaintiff to the defendant. This amount was payable by the plaintiff

to the defendant in installments, namely,

10% on or before 30.06.2012;
15% on or before 30.06.2013;
20% on or before 30.06.2014;
25% on or before 30.06.2015
and balance 30% on or before 30.06.2016.

29. There is no evidence on record to show that the plaintiff had honoured the commitment to pay the said amount to the defendant.

30. A further perusal of the agreements reveal that therefore there were mutual promises made by both the parties. The plaintiff had to pay the 60% of the revaluation reserve to the defendant. The defendant had to transfer land to an extent of 1.44 acres in favour of the company free of costs and had also undertaken to transfer an additional 4.56 acres at a mutually agreed price if required by the company. There are no records and no evidence to show that both the parties fulfilled their respective promises. However, it is a fact that the plaintiff and his wife were co-opted as Directors of the two companies.

31. It is the complaint by the plaintiff that he entered into the two agreements without carrying out due diligence. No Court can come to the

rescue of a plaintiff, who complains of innocence while entering into an agreement and making payments by way of demand drafts of huge sums of Rs.46,20,000/- and Rs.58,80,000/-. The plaintiff was also given the right to nominate Chief Executive Officers and Chief Financial Officers. There are no records to show that the plaintiff had actually nominate such Officers. There are no records to show that after purchase of the shares and after taking over the administration of the two companies, the plaintiff had carried out due diligence as provided in the agreement. There are no records to show that the plaintiff had detected differences between the balance sheet and the actuals and that he had called upon the defendant to indemnify him with respect to such differences.

32. It is the case of the plaintiff after he took as Director, he found that both the companies were in a financial mess. The agreements had been entered into in June 2010. If the plaintiff had found that both the companies were in a financial mess then the normal course of action expected from any ordinary person is to take up such issue with the person, who had invited him to be a part of the management. In this case, it was only to be expected that immediately after taking over the administration of the companies, if the plaintiff had detected financial mess, then he

should have called upon the defendant to indemnify him with respect to the differences in the figures as projected in the balance sheet and as found to be actuals. There are no records to show that the plaintiff actually took such steps. Ex.P-4, P-5, P-6 and P-7 are letters written by the Directors of the company resigning their Directorship. These letters are all dated 21.09.2011. This would naturally indicate that atleast from September 2011, the plaintiff had consolidated complete administration of the two companies.

33. The suit had been filed on 07.11.2014. The plaintiff by the suit seeks return of the two amounts which he had paid by way of demand draft towards 60% of the shares, namely, Rs.46,20,000/- and a sum of Rs.58,80,000/-. The plaintiff also claims interest on the said amount amounting to Rs.80,32,500/-.

34. Very significantly, the plaintiff has however not taken any steps to file the accounts from 14.06.2010 till the date of filing of the suit with respect to two companies. This is important since the accounts, atleast the audited accounts would have revealed the advantages received by the plaintiff owing to such purchase of shares.

35. As a matter of fact, PW-1 admitted as follows:-

“I have not filed the accounts details from 14.06.2010 till the filing of the suit. From June 2010 I have been operating the bank accounts of the two companies.”

36. It is seen that the plaintiff had taken complete control over not only the administration of the companies, but also the financial administration. The onus was on him to develop the businesses and then take it forward. During cross examination, the plaintiff also stated *“the name of M/s. AUM Agrotech Ltd., is now changed as M/s. Girija Chemicals and Industries Ltd.”* He also claimed that he was the Chairman cum Managing Director of the company. He also stated as follows:-

“As per records of the Registrar of Companies, I am the Chairman and executive Director of M/s. AUM Consultancy Pvt. Ltd. This record had been marked as Ex.D-3.”

37. These statements signify the fact that the plaintiff had taken not only control of the affairs of the companies but also administrative and

financial control of the two companies. Being Chairman and Managing Director / Executive Director, the plaintiff had every right to conduct due diligence and if the companies were not financially as sound as projected by the defendant, then he should have called upon the defendant to indemnify him for the said difference amount.

38. The issues now taken up for consideration are whether the plaintiff can claim that the agreements are voidable at his instance.

39. It is the charge of the defendant that the plaintiff had also committed acts of breach of trust and also misappropriations in relation to the two companies. Exs. P-1 and P-2 are concluded agreements. So far as the plaintiff is concerned, he was interested in taking over control of the company by purchasing 60% of the shares. He had paid the consideration for the same. He had obtained the share certificates in his name. In the Registrar of Companies, he had also projected himself as the Chairman and Managing Director/Executive Director. Thus, the purchase of the shares has become an executed contract. The shares have been sold. Monies have been paid. Administration of the companies have been handed over.

After that, the plaintiff cannot claim that the contract is a voidable

agreement and that he can move away from the said agreement. The plaintiff can at most perform due diligence of the affairs of the company and if he had found differences between what was projected by the defendant and what was the actuals claim to be indemnified from the defendant.

40. On the other hand, having obtain the benefit of 60% holding of the two companies, and having enjoyed the benefits of being the Chairman and Managing Director/Executive Director and having commenced to run the companies, the plaintiff cannot by any stretch of imagination wish away the shares purchased by him and call upon the defendants to pay back the amounts towards the value of the shares.

41. In Ex.D-5, the plaintiff had claimed a total expenditure of Rs.5.29 crores. However, in page 2 of Ex.D-5 the breakup given for the said total expenditure and the amounts did not tally. During cross examination, the plaintiff stated as follows:-

“Q: Witness is shown Ex.D5: *“in this record of expenditure submitted to investigation,*

you have claimed total expenditure of Rs.5.29 crores.

A: Yes

Q: Page 2 is the break up given for the said total expenditure of Rs.5.29 crores. The amounts and the total of the breakup do not tall. How?

A: I need to verify with my accountant

Q: So, without even verifying with your staff, you submit inconsistent figures to the investigation.

A: I deny. It could be a typographical error.”

42. The plaintiff was further cross examined with respect to the amounts mentioned in Ex.D-5. The cross examination was as follows:-

“Q: In Ex.D5 what is the break up for legal fees paid to overseas counsel in US?;

A: Rs.9,26,041/-

Q: What is the amount claimed for lawyer fees to USA lawyer in the suit? (Shown Complaint)

A: Rs.22,50,000/-

Q: In Quash petition in the Ex.D10 what is the amount stated for the same for USA Lawyer fees?

A: Rs.30,00,000/-

Q: You have not filed any evidence with your

plaint regarding these payments?

A: Yes, I have not

Q: In the said document (Ex.D5) what is the total amount given for travelling expenses for the defendant?

A: Rs.23,37,887/-

Q: What is the amount claimed from defendant traveling expenses in the suit (shown plaint);

A: Rs.45,00,000/-

Q: What is the amount claimed for Car installment? And what is break up amount?

A: The amount claimed is Rs.9,07,674/- (Ex.D-5). The break up given is Rs.15,89,072 which is given twice. I have to check with my team if Rs.15,89,072/- is the amount spent once or twice.

Q: Therefore, for an amount of Rs.9,07,674/- the break up provided for above is Rs.31,00,000/-?

A: Yes

Q: What is the amount claimed for car expenses in the suit? (Shown Plaint).

A: Rs.17,55,738/-."

correct amounts before the Court. As a matter of fact, documents were also not filed substantiating the amounts claimed in the suit.

44. The defendant had occasion to initiate criminal proceedings as against the plaintiff and his wife. On a complaint given by him, FIR No. 250 of 2013 dated 03.03.2013 had been registered under Sections 406 and 420 IPC read with 120(b) IPC. The copy of the FIR has been marked as Ex.D-9. During cross examination of PW-1, he admitted that he had also promoted another company by name M/s. AUM Saw Pipes and Industries Pvt. Ltd. The evidence was as follows:-

“Q: Who is founder of AUM Saw Pipes and Industries Pvt Ltd.,?”

A: I am the founder

Q: Who were the other stakeholders in AUM Saw Pipes and Industries Pvt. Ltd.?”

A: I need to verify.”

45. It is seen that the plaintiff had encroached on the name of the two companies.

46. The plaintiff had also not taken the step to summon the defendant to the witness box. He had also not filed any document to substantiate the claims made in the plaint. The issues under determination relate to the two companies in which he had purchased 60% holding of the shares. It is seen that he had also not produced the accounts for the companies during his period of management. Section 64 of the Indian Contract Act is as follows:-

***“Section 64 in The Indian Contract Act,
1872***

64. Consequences of rescission of a voidable contract.—*When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he had received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.”*

47. The said provision can arise only if the Court comes to a conclusion that Exs. P-1 and P-2 are voidable contracts. They are not voidable. So far as the transfer of shares are concerned, they are concluded

contracts. Further obligations on both the parties will arise depending on the promise made by each to the other. The plaintiff will have to pay the revaluation reserve amount with respect to the assessment in the instalments stated above. He had failed to make the payment. The issue whether the agreements are voidable can therefore not at all arise for consideration as the plaintiff is in breach of the said agreements. I hold that the entire claim for the amounts paid towards the value of the shares is totally misconceived.

48. It is not the case of the plaintiff that he had not been put in management after he purchased the shares. He had nominated himself as Chairman and Managing Director/Executive Director. Having acted in pursuance of the said agreements, the plaintiff cannot turn around and claim that the agreements are voidable in nature. The agreements are valid and binding and have been executed with consensus ad-idem between the parties. They knew the terms of the agreement. The plaintiff, in the plaint itself had described himself as an entrepreneur involved in several businesses both in India and overseas. He had also described himself as being known for his righteous attitude and that the commands outstanding goodwill in India and abroad. He had further stated that his business

empire has branches all over the world, which includes projects, exports and imports, chemical manufacturing units, custom house agents, shipping and allied services. With all this as his credentials, the plaintiff cannot claim innocence and ignorance while entering into Share Purchase Agreements with the defendant. He cannot seek the indulgence of the Court. The agreements which he entered into are not voidable at his instance. He had benefitted by the said agreements by taking over the management of the two companies. He had elevated himself to the post of Chairman and Managing Director / Executive Director. He cannot thereafter, complain about the alleged financial status of the companies. Even in the agreements, it had been covenanted that the plaintiff can conduct due diligence and can claim indemnity from the defendant. There is no record to show that he had conducted due diligence. There is no record to show that he had claimed indemnity from the defendant. The plaintiff has to suffer the consequences of the agreements which he had entered into with the defendant. The plaintiff cannot be granted any relief on the ground that the agreements are voidable.

49. On the other hand, the registration of the First Information

Report as against the plaintiff shows that the onus is on the plaintiff to

clear his name of breach of trust, maladministration and misappropriations. During the course of arguments, it had come to light that charge sheet has been filed as against the plaintiff reflecting him as an accused.

50. In view of all these reasons, I hold that:

(1) The suit is a mala fide endeavour to overcome the acts of breach of trust, maladministration and misappropriations in relation to the companies found by the defendant;

(2) The share purchase agreements are not voidable at the instance of the plaintiff; and

(3) The Share Purchase Agreements are lawful agreements; and

(4) The plaintiff cannot maintain the present suit since he had not produced true and proper accounts of the companies during his period of management.

51. Accordingly, Issue Nos. 1, 2, 3, 4 and 6 are answered against the plaintiff.

Issue No.5:

52. It appears that the plaintiff had also initiated proceedings before the National Company Law Tribunal at Chennai. This issue relates to whether the plaintiff can file such an application before the National Company Law Tribunal at Chennai. Filing of applications in a competent forum convenient to the plaintiff is the prerogative of the plaintiff. The plaintiff has filed a civil suit before this Court. He has every right to file any other petition before any other Forum. If the petitions are malafide in nature, then he would suffer the consequences. But he cannot be found fault merely because it is stated by the defendant that the two proceedings are mutually destructive. Both the litigations have been instituted by the plaintiff. He will have to take them forward. Both the litigations would meander through their own course. Therefore, I hold that the plaintiff cannot be faulted for filing a petition before the National Company Law Tribunal at Chennai. The answer to this issue would be of no

consequence. It is for the defendant to point out the inconsistency in the case of the plaintiff before the two Forums. This Court is not adjudicating the petition filed before the National Company Law Tribunal and therefore, it would be highly inappropriate on the part of this Court to pass observation regarding the merits of the said petition. The issue is therefore answered not in favour of the plaintiff but that it is for the plaintiff to face the consequence of the two litigations initiated by him.

Issue No.7:

53. In the plaint, the plaintiff has also sought the amounts paid to the lawyer in USA, the amount paid for purchase of vehicles and Jeep and the amount paid to the defendant for travelling and as other expenses. It is admitted by the plaintiff that he had not filed any documents to substantiate such claims.

54. In the absence of any supporting documents, the plaintiff can never maintain the said claims. It is seen that the plaintiff had claimed in

Ex.D-5 a sum of Rs.9,26,041/- for the legal fees paid to the counsel in

USA. In the plaint, he had claimed Rs.22,50,000/-. In Ex.D-10, which is the petition to quash the FIR, he had claimed sum of Rs.30,00,000/-. To a direct question put with respect to the evidence for such payment, he had stated as follows:-

“Q: You have not filed any evidence with your plaint regarding these payments?

A: Yes. I have not.”

55. No documents have been filed with respect to the travelling expenses of the defendant. No documents have been filed with respect to the purchase of vehicles or Jeep. These are documents which could be produced by the plaintiff. Atleast a notice could have been issued calling upon directing the defendant to produce the documents. The plaintiff had not taken any such steps. In view of these facts, there being absolutely no credible evidence, I hold that this issue will necessarily have to be answered against the plaintiff.

Issue No.10:

56. The defendant had not filed any counter claim and is also not

seeking any counter claim against the plaintiff. The defendant has only questioned the claims raised by the plaintiff and therefore, it is not necessary that a counter claim should be presented by the defendant. The issue is answered in favour of the defendant.

Issue No.8:

57. It is seen that the hostilities between the parties arose in the year 2011 and the suit had been presented in the year 2014. In the cause of action paragraph, the plaintiff has also relied on various electronic mails sent to revive the businesses and also on the complaint given by the defendant before the police authorities. There has been continuous exchanges of correspondences between the parties. The correspondences extended upto the year 2012. The plaintiff had sought return of the amounts paid by him towards purchase of shares and the various expenses said to have been incurred by him on account of the defendant. The issue of limitation raised by the defendant is more formal in nature and I hold that the issue is to be answered in favour of the plaintiff and that the suit had been filed within the period of limitation.

Issue Nos. 9 & 11:

58. In the result, I hold that the suit has to be dismissed as none of the claims have been proved in the manner known to law.

59. The suit is therefore dismissed with costs. Costs to be paid in accordance with the amended Section 35 of the Code of Civil Procedure.

60. The Registry is delegated and directed by this Court to determine the costs and the defendant is permitted to file their Bill of Costs relating to legal fees and expenses; and any other expenses incurred in connection with the proceedings. On the filing of the Bill of Costs, the Registry may determine the quantum of the costs.

22.01.2020

Index: Yes/No

Web: Yes/No

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Speaking/Non Speaking Order

1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 – Mr.H.Ramesh (Plaintiff)

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 = the xerox copy of agreement in respect of M/s. AUM Agrotech Limited dated 14.06.2010;
2. Ex.P2 = the xerox copy of Agreement in respect of M/s. AUM Consultancy Private Limited dated 14.06.2010;
3. Ex.P3 = the xerox copy of Balance Sheet as on 31.03.2010;
4. Ex.P4 = the xerox copy of Resignation letter of Tara Lee Kumar Wylde dated 21.09.2011;
5. Ex.P5 = the xerox copy of Resignation letter of Jennifer Kumar dated 21.09.2011;
6. Ex.P6 = the xerox copy of Resignation letter of Jennifer Kumar dated 21.09.2011;
7. Ex.P7 = the xerox copy of Resignation letter of Nadukudikariyandi Shashikumar dated 21.09.2011;
8. Ex.P8 = the xerox copy of email sent by the plaintiff and marked to defendant dated 13.12.2011;
9. Ex.P9 = the xerox copy of letter sent by M/s. SBTL to AUM Consultancy Pvt., Ltd., dated 30.03.2012;
10. Ex.P10 = the xerox copy of E-mail communications from Krishnan (representative of defendant) to the plaintiff dated 07.09.2012;
11. Ex.P11 = the xerox copy letter issued by the defendant appointing Krishnan as his consultant dated 19.09.2012;
12. Ex.P12 = the xerox copy E-mail sent by the plaintiff to the defendant and others dated 01.11.2012;

- 13.Ex.P13 = the xerox copy of legal notice issued by the plaintiff dated 06.11.2012;
- 14.Ex.P14 = the xerox copy of Acknowledgement for legal notice dated 07.11.2012;
- 15.Ex.P15= the xerox copy of Complaint given by General Manager of AUM Agrotech Limited dated 29.11.2012;
- 16.Ex.P16 = the xerox copy of Assessment order passed by the Deputy Commissioner of income tax dated 15.12.2012;
- 17.Ex.P17 = the xerox coy of complaint to Deputy Commissioner of Police given by defendant dated 26.02.2013;
- 18.Ex.P18 = the xerox copy of first Information Report in Cr.No. 250/2013 dated 03.03.2013;
- 19.Ex.P19 = the xerox copy of witness summons by DSP, DCB Kancheepuram dated 08.03.2013;
- 20.Ex.P20 = the Xerox copy of letter sent by the inspector dated 27.03.2014.

3. List of Witnesses Examined on the side of the defendant:-

- Nil-

4. List of Exhibits Marked on the side of the defendant:-

1. Ex.D1 = C.P.No. 7/2016 petition filed by plaintiff to interim counter December 2016;

2. Ex.D2 = C.P.No.7/2016 petition filed by plaintiff before NCLT 14.10.2016;
3. Ex.D3 = Form 32 filed with ROC dated 22.06.10 Chennai;
4. Ex.D4 = Form 2 filed with ROC Chennai for share allotments in favour of the plaintiff dated 01.03.11, 2011;
5. Ex.D5 = Expenses figures furnished by the plaintiff dated 01.04.2011 to 08.09.11;
6. Ex.D6 = Minutes of the meeting dated 01.03.11 to 18.08.11;
7. Ex.D7 = Bills submitted by plaintiff CrI.O.P.No. 26157/14;
8. Ex.D8 = Letter from the defendant dated 24.09.12;
9. Ex.D9 = First Information Report 250/13 registered in E-5 Foreshore Estate P.S dated 03.03.13;
- 10.Ex.D10 = Petition to Quash the First Information Report 250/13 dated 10.09.2014;
- 11.Ex.D11 = Legal Notice from the plaintiff dated 06.11.12;
- 12.Ex.D12 = E-mail from the defendant to plaintiff dated 05.11.12;
- 13.Ex.D13 = Auditor's Interim Report dated 03.08.13;
- 14.Ex.D14 = Mail dated 11.09.08;
- 15.Ex.D15 = Mail dated 08.07.2009;
- 16.Ex.D16 = Defendants reply mail dated 08.07.2009;
- 17.Ex.D17 = Mail dated 28.04.10;

- 18.Ex.D18 = Mail dated 30.04.10 from the plaintiff to defendant;
- 19.Ex.D19 = Mail dated 30.05.10 from the plaintiff to defendant;
- 20.Ex.D20 = Mail dated 31.05.10 from the plaintiff to defendant;
- 21.Ex.D21 = Reply mail dated 31.05.10 from the plaintiff to the defendant;
- 22.Ex.D22 = Fixed Deposit Receipts year 2010;
- 23.Ex.D23 = Ledger statements produced by plaintiff for the period of 01.04.11 to 31.03.12;
- 24.Ex.D24 = Email dated 16.08.11 from the defendant to the plaintiff;
- 25.Ex.D25 = Minutes of the meeting dated 18.08.11;
- 26.Ex.D26 = Minutes of the meeting dated 18.08.11;
- 27.Ex.D27 = Anticipatory bail petition CrI.O.P.No. 8663/13 dated 02.04.13;
- 28.Ex.D28 = Petition for Intervenor M.P.No.1/132 CrI.OP.No. 8663/13 filed by the defendant dated 04.04.13;
- 29.Ex.D29 = Counter affidavit filed by the plaintiff M.P.No.1/13 CrI.OP.No. 8663/13 dated 10.04.13;
- 30.Ex.D30 = Order of the Hon'ble High Court in CrI.O.P.No. 8663/13 dated 06.08.13;
- 31.Ex.D31 = Petition for relaxation of Bail conditions dated 29.08.13;
- 32.Ex.D32 = Order passed by high Court CrI.M.P.No. 2/13 dated 05.09.13;

- 33.Ex.D33 = Petition along with affidavit dated 06.09.13;
- 34.Ex.D34 = First Information Report 21/14 dated 07.01.14 registered in Sriperumbudur Police Station;
- 35.Ex.D35 = Order dated 09.01.14 passed by high Crl.O.P.No. 33084/13;
- 36.Ex.D36 = Order dated 26.03.14 passed by the High Court Crl.OP. 2 & 3/13 in Crl.O.P.No. 8663/13;
- 37.Ex.D37 = Counter affidavit dated 26.03.14;
- 38.Ex.D38 = Interim Order of the High Court Crl.O.P.26157/14;
- 39.Ex.D39 = Counter affidavit Crl.OP.26157/14;
- 40.Ex.D40 = Creditor lists submitted in investigation by the plaintiff;
- 41.Ex.D41 = Cause notice dated 17.09.14;
- 42.Ex.D42 = Order of Hon'ble High Court dated 23.07.15 Crl.O.P.No. 26157/14;
- 43.Ex.D43 = Reply letter dated 06.10.14;
- 44.Ex.D44 = Reply letter dated 28.11.14;
- 45.Ex.D45 = Certificate of life fellowship conferred on the defendant in Indian Institution of plant Engineers dated 25.12.1994;
- 46.Ex.D46 = Communication by Managing Director of SBLT dated 22.11.14;
- 47.Ex.D47 = Petition filed by the defendant in Crl.O.P.19707/16;

- 48.Ex.D48 = Order of the High Court dated 02.09.16
Crl.O.P.19707/16;
- 49.Ex.D49 = Order of the High Court dated 29.11.16
Crl.O.P.19707/16;
- 50.Ex.D50 = Order of the High Court dated 22.11.16
Crl.O.P.19707/16;
- 51.Ex.D51 = Interim Counter filed by the defendant in C.P.7/16;
- 52.Ex.D52 = Sur-Rejoinder filed by the defendant to the rejoinder
filed by the plaintiff in C.P.7/2016;
- 53.Ex.D53 = Company application 103/17 filed by the defendant
C.P. Rejection of CP with Leave Application;
- 54.Ex.D54 = Proceedings of Hon'ble NCLT, Chennai dated
31.05.17;
- 55.Ex.D55 = Search and Seizure order issued to investigation in
Crl.M.P.3445/16;
- 56.Ex.D56 = Copy of endorsed returned copy application filed in
Crl.M.P.3446/16;
- 57.Ex.D57 = Proceedings of High Court NCLT, Chennai dated
21.06.16;
- 58.Ex.D58 = Proceedings of Hon'ble NCLT Chennai dated
21.06.16;
- 59.Ex.D59 = Counter affidavit;
- 60.Ex.D60 = Affidavit filed on behalf of the plaintiff in C.P.7/16;
- 61.Ex.D61 = Proceedings of High Court NCLT Chennai C.P.7/16
dated 08.12.17;

- 62.Ex.D62 = Proceedings of High Court NCLT Chennai C.P.7/16 dated 05.01.18;
- 63.Ex.D63 = Proceedings of High Court NCLT Chennai C.P.7/16 dated 22.01.18;
- 64.Ex.D64 = Affidavit filed by the plaintiff C.A.103/17 C.P.7/16;
- 65.Ex.D65 = Proceedings of High Court NCLT Chennai C.P.7/16 dated 12.02.18;
- 66.Ex.D66 = Affidavit along with Judges Summons filed by the plaintiff;
- 67.Ex.D67 = Letter dated 19.04.18 from the counsel for the plaintiff;
- 68.Ex.D68 = Counter affidavit filed by the defendant in C.S.No.778/14;
- 69.Ex.D69 = Passport of the defendant for the period 2007-2017;
- 70.Ex.D70 = Interim order in Crl.O.P.8663/13 dated 22.04.13;
- 71.Ex.D71 = Audited financial of AUM Agrotech for the year 2011 (31.03.2011);
- 72.Ex.D72 = Mail from SBTL to defendant dated 13.07.15;
- 73.Ex.D73 = Staff particulars provided by plaintiff to investigation;

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74.Ex.D74 = Contract of AUM Agrotech with Jawdat produced by

plaintiff to investigation;

75.Ex.D75 = Plaint copy served by plaintiff counsel at the first instance;

76.Ex.D76 = Certified copy of counter;

77.Ex.D77 = Legal Notice dated 28.06.14.

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22.01.2020



Pre-Delivery Judgement in

C.S.No.778 of 2014

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